Fiqh

4

فقه

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Hajj (pilgrimage)

Definition of hajj:

Linguistically: Going to specific sacred places.
Juridically: Going to makkah to perform specific acts, at specific times, for the purpose of worship.

Allah said:

"ولله على الناس حج البيت من استطاع إليه سبيلا, ومن كفر فإن الله غني عن العالمين"

".. And *hajj* (pilgrimage to Makkah) to the house (Ka`bah) is a duty that mankind owes to Allah, those who can afford the expenses (for conveyance, provision and residence); and whoever disbelieves (i.e. denies hajj, then he is a disbeliever of Allah, then Allah stands not in need of any of the `alamin (mankind and jinns)." (Al-Imraan: 97)

Pilgrimage legitimacy:

1) *Hajj* is obligatory to be performed once in a lifetime.
2) *Hajj* is the fifth pillar of Islam.
3) *Hajj* was imposed on Muslims in the ninth year of *hijrah*.

Pilgrimage virtues:

قال رسول الله صلى الله عليه وسلم: "من حج فلم يرفث ولم يفسق رجع كيوم ولدته أمه" رواه مسلم

Abu Hurairah reported that the Prophet صلى الله عليه وسلم said:

"He who makes *hajj* and avoids obscene language and immoral behavior, will return without his sins like the day his mother gave birth to him." (Collected by Al-Bukhaari and Muslim)

Pilgrimage wisdom:

1) Shows the universality of Islam.
2) Reminds us of the day of judgement.
3) Cleanseness of the self from the sin's impact.

Conditions of the obligation of *hajj*:

1) Islam.
2) Rational (sane).
3) Puberty.
4) Ability to perform hajj.
5) Non-slave.
6) For women: She has to have *mahram*[1].

Hajj pillars (*arkaan*):

A) *Ihraam*.
B) Standing in ‘Arafah.
C) *Tawaaf al-ifadah*.
D) *Sa’y*.

Hajj obligatories (*waajibaat*)[2]:

1) *Ihraam* from *meeqaat*
2) Standing in ‘Arafah till sunset.
3) Sleeping in Muzdalifah.
4) Sleeping in Mina.
5) Stoning the *jamaraat*.
6) Shaving or cutting the hair.
7) *Tawaaf al-wadaa’* (last *tawaf*).

Hajj ceremonial types:

1) Single *hajj* (*ifrad*): The intention to perform *hajj* only.
2) Combined *hajj* & *umrah* (*qiraan**): The intention is to perform *hajj* & *umrah* together and performing one *tawaaf* and one *sa`y* is enough.
3) enjoining *umrah & hajj* (tamattu’*): The best devotion of *hajj* types. Performing *umrah* in the months of *hajj* and detach oneself from *umrah* and in the 8th day of Dhul-hijjah make *ihraam* to perform *hajj*.

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[1] *Muhram* is either her husband or close male relative who is not permitted to marry her and the *muhram* has to be adult to be able to protect her.
[2] If he misses a *waajib*, he has to sacrifice a sheep (or 1/7 of a camel or 1/7 of a cow).

*Note: (a sacrifice is compulsory if the person is not from Makkah which is a sheep or a share of 1/7 of a camel or cow; if unable to sacrifice, then he must fast 10 days (days during *hajj* and 7 days when he goes back to his country).

Definition of *ihraam*:

The intention to enter the state of *hajj*.
Muhrim: The person in the state of *ihraam*.

Ihraam restrictions:

A) on men:	<u>if done:</u>
1. Covering the head.	normal expiation
2. Wearing the usual clothes.	normal expiation

B) on women:

1. Wearing *niqaab* (veil with halls for eyes).	normal expiation
2. Wearing gloves.	normal expiation

C) on both:

1. Shaving hair.	normal expiation
2. Clipping nails.	normal expiation
3. Putting perfumes.	normal expiation
4. Marriage contract (even engagement).	no expiation
5. Hunting.	equal expiation
6. Sexual intercourse.	If before first detachment **à** major expiation[1] If after first detachment **à** normal expiation[2]
7. Sexual activity.	normal expiation

* But under three conditions:

1) intention 2) knowledge 3) realization

Normal expiation:

1. Fasting three days (*siyam*) or
2. Feeding six needies (1/2 sa'a each) [sadaqah][*] or
3. Sacrificing a sheep [nusuk][*].

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[1] Plus he is sinful, his *HAJJ* is spoiled + continue +make *HAJJ* next year.
[2] Plus he is sinful, he should make a NEW *IHRAM* from TAN'EEM.
[*] In the Haram

Allah said, "And whosoever of you is ill or has an ailment in his scalp, he must pay a *fidyah* of either observing *siyaam* or *sadaqah* or *nusuk.*" (Al-Baqarah: 196}

Major expiation: Sacrifice a camel or a cow.

General notes

1) He should make *talbiyah* from the beginning of *ihraam* until stoning the Big Jamarat al-'Aqabah on the 10th.
2) Going to Mina on the 8th is *sunnah*, while he can go to 'Arafah on the 9th directly, but he has to do *sa'y* after *tawaaf* al-ifadah.
3) When he reaches 'Arafah, he must make sure that he is in 'Arafah boundaries.
4) In 'Arafah he is not requested to go to Jabal ar-Rahmah (Mercy Mountain), instead he should be in a place that helps him to concentrate on du'aa'.
5) He should leave 'Arafah to Muzdalifah calmly, and asking forgiveness as ordered (see al-Baqarah: 199).
6) When reach Muzdalifah, he should pray Maghrib & 'Isha, the first thing thin make rest to be ready for next day.
7) If one is old, weak, woman or accompanying them they are excused to leave Muzdalifah after mednight (when moon sets).
8) After praying Fajr (at it's early time) it is *sunnah* to make du'aa' then leave Muzdalifah before sunrise.
9) He can collect the pebbles on his way to Mina, or anywhere.
10) When stoning the *jamaraat* the counted stone must fall in the pool (hitting the pillar is not requested).
11) The order of the works on the 10th is *sunnah*, if it's made otherwise it is accepted.
12) During Tashreeq Days, he must stay in Mina.
13) Stoning *jamaraat* during Tashreeq Days:
a) Must be after the sun passes the zenith.
b) At this time, he should make *takbeer* with each stone.
c) After stoning the small (1^{st}) *jamrah*, it is *sunnah* to make *du'aa'* after passing the *jamrah* on left, and the same thing with the med. (2^{nd}) *jamrah* only.
14) He must make *tawaaf al-wadaa'* (farewell) last thing before leaving.
15) If he intend and made *tawaaf al-ifadah* at the end (*tawaaf al-wadaa'* will be included).
16) If she got menstruated after making *tawaaf al-ifadah*, she is excused not make *tawaaf al-wadaa'* and leave home.

Hady – ud-hiyah – 'aqeeqah

Hady is the offered animal in the Haraam (Makkah and Mina) in the following cases:
1- *Hajj* (*tamattu'* and *qiraan* types).
2- Missing a *hajj waajib*.

3- *Ihraam* restriction is made. (it is *waajib*)

Ud-hiyah is the offered animal in the day of 'Eed *al-ad-ha*. (it is conformed *sunnah*)
'Aqeeqah is the offered animal if one has a new born baby. (it is conformed *sunnah*)

Notes:

1) It is a *sunnah* to eat from the sacrificed animal in case of *hady* (not for missing *waajib* or *ihraam* restriction), *ud-hiyah* and 'aqeeqah.
2) It is possible to participate in *hady* (for *hajj*) and *ud-hiyah* every seven in one camel or cow.

Types of sacrificial animals:

Camel: The best type, it should be five years old at least.
Cow: It should be two years old at least.
Sheep: It should be six months old, one year for goats.

Condtions for sacrificial animals:

1) Should be old enough.
2) Should be free of defects (i.e. one eyed, lame, mangy, or thin).

Notes on *aqeeqa*:

1) Sacrificing it, is better the giving its value as a charity.
2) If having a boy, he should sacrifice two sheep, else one for a girl.
3) It is recommended to sacrifice on the seventh day after born (on that day it is better to name the baby and give him/her a good name.
4) In 'aqeeqah, it is not allowed to participate in a camel or a cow.

The marriage (*an-nikaah*)

قال الله عز وجل: "ومن آياته أن خلق لكم من أنفسكم أزواجا لتسكنوا إليها وجعل بينكم مودة ورحمة إن في ذلك آيات لقوم يتفكرون" {الروم:21}

Allah said, "And among his signs is this, that he created for you mates from among yourselves, that ye may dwell in tranquillity with them, and he has put love and mercy between your (hearts): verily in that are signs for those who reflect." (Ar-room: 21)

وقال النبي عليه الصلاة والسلام: "يا معشر الشباب من استطاع منكم الباءة فليتزوج فإنه أغض للبصر وأحصن للفرج ومن لم يستطع فعليه بالصوم فإنه له وجاء" متفق عليه

Prophet Muhammad r said, "O young men! Those of you who can support a wife should marry, for it controls gaze and preserves one from immorality; but those who cannot should fast, for it is a means of suppressing the sexual desire." (agreed upon)

Virtues of marriage:

1) Saving the human generations, increasing the Muslim population.
2) Preserves from immorality.
3) Protecting and maintaining women by men.
4) Enjoy the pleasure of living.

Marriage contract:

It is recommended to start the marriage contract with khutbah (speech) by saying "Inna al-hamda lillahi nahmaduhu wa nasta'inuhu..."

Conditions of marriage:

a) Pre-selection of parties.
b) Mutual consent.
c) Existence of the *wali* (the guardian).
d) Witness on the contract (by two honorable record men).

Forbidden women in marriage

Permanent forbiddance:

A) Kinship:

1- Mother & grand mother.
2- Daughter & grand daughter.
3- Sister.
4- Daughter (of brother or sister) & her daughter.
5- Aunt (father's sister or mother's sister).

B) Reason:
1- Mutual imprecation (*li'aan*).
2- Suckling (what is equivalent to kinship).
3- Father's (or grand father's) wife (just after contract).
4- Son's (or grand son's) wife (just after contract).
5- Wife's mother (or grand mother) (just after contract).
6- Wife's daughter (or grand daughter) (just after gone in).

Temporal forbiddance:

1. Two sisters in wedlock at the same time.
2. More than four wives.
3. Prescribed period (after divorce).
4. Adulteress (fornicator).
5. Three times divorced wife.
6. A woman in state of *ihraam*.
7. A *kaafir* woman
8. A slaved woman.

The book of *talaaq* (divorce)

Al-Khul': The woman's right of cancellation of her marriage.

قال الله عز وجل: "فإن خفتم ألا يقيما حدود الله فلا جناح عليهما فيما افتدت به" {البقرة:229}

Allah said, "If you (judges) do indeed fear that they would be unable to keep the limits ordained by allah, there is not blame on either of them if she give something for her freedom." (Al-Baqarah: 229) Also see *hadeeth* no. 914 in *Bulugh al-Maram*.

Allah has ordained the conjugal/marriage live to be with love and mercy. But when it comes to a closed bath, then it is possible for the woman to request the *Khul'* and redeem herself from the husband. Unless it is not needed then it is disliked.[1]

At-talaq (divorce)

قال الله عز و جل: "الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان" {البقرة:229}

Allah said, "A divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness." (Al-Baqarah: 229)

Definition of *at-talaaq*:

Linguistically: To set free.
Juridically: To free the woman from the bond of marriage.

<u>The rule of *at-talaq*</u>: In general, it is hated to Allah, but in some cases it is the only solution.
<u>When to divorce</u>: When the wife is purified, before having intercourse with her. Otherwise it is *haraam*.
<u>Who can divorce</u>: The discernment, realized husband, who recognizes it.

[1]Some scholars consider *KHUL'* different than Divorce.

	Sunnah talaq	vs.	*Bid'ah talaq*
Time wise	When wife is purified and before intercourse		When wife is menstruated (or post-birth bleeding), or when purified after an intercourse.
Number Wise	Divorce her once		Divorce her multiple times [Three times for free man and two times for a slave].
	<< *Halaal* >>		<< *Haraam* >>

Conditions for taking back the wife (*raj'ah*):

1. The divorce should be less than the max number.
2. During the *'iddah* (period of waiting).
3. The divorced wife was gone in.
4. The divorce should be a compensated.
5. It should be a true *nikaah* (marriage).
6. It should be unconditioned.

General notes:

1. It is equal to pronounce the divorce seriously or jokingly.
2. The divorce must be pronounced or written.
3. It is possible to make the divorce conditioned.
4. During the *'iddah,* the marriage is still valid.
5. When getting the wife back, it is liked to be witness on.